IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1417 OF 2005
IN
SUIT NO.1942 OF 2004

Prem Vinay Wainaagankar & Ors. ....Plaintiffs
V/s.
Meena B. Ahluwalia & Ors. ....Defendants

Mr.P.R. Naidu for the Plaintiffs.
Mr.P.K. Samdani with Swapnil Bangur i/b Mr.G.S. Manasawala for the Defendants.

CORAM : S.J. VAZIFDAR, J.
DATED : 9TH JANUARY, 2006.

P.C. :

1. The Chamber Summons is for amendment of the plaint. Plaintiff No.1 is the wife of Plaintiff No.2. Plaintiff No.1 is the daughter of Defendant Nos.1 and 2. Defendant No.3 is the son of Defendant Nos.1 and 2.

2. The suit was filed for a declaration that the Plaintiffs are the owners of the suit flat and that the steps taken by Defendants to grab the same are illegal. The Plaintiffs have also sought a permanent injunction restraining the Defendants from transferring or encumbering the suit flat. It is important to note that the entire plaint proceeds on the basis that the Plaintiffs are the owners of the suit flat. Mr.Naidu, the learned counsel appearing on behalf of the Plaintiffs reiterated before me that the

Plaintiffs were the owners of the suit flat. It is alleged in the plaint that till June, 2003, one Gupta was permitted by Defendant No.1 to occupy the suit premises on leave and license basis. The first question that arises is the authority of Defendant No.1 to give the suit flat on leave and license. That however is a matter on merits. Again in paragraph 8, the Plaintiffs' case is that after Gupta vacated the flat in June, 2003, the Plaintiffs requested Defendant No.1 to allow them to occupy the suit flat. Mr.Samdani, the learned counsel appearing on behalf of the Defendants submitted, not without force, that this case militates against the Plaintiffs' case of ownership for if the Plaintiffs were actually the owners, there was no question of the Plaintiffs asking Defendant No.1 to permit them to occupy the suit flat. This however, is also a question on merits.

3. Lastly, the Plaintiffs have contended that they permitted Defendant No.1 to occupy the suit flat in July, 2003 but that on 24th August, 2004, Defendant No.2 along with certain others attempted to break into the flat. It is important to note that in paragraphs 9 and 10, it is stated that attempts were made to dispossess the Plaintiffs. Nowhere has it been stated that the Plaintiffs were in fact dispossessed by the

Defendants. It is only in paragraph 11 that the case of any dispossession has been made out. What is important to note is that it is alleged that the police authorities sealed the flat. It is alleged that this was in collusion with and at the instance of the Defendants.

4. Proceedings have been initiated under the Indian Penal Code and Criminal Procedure Code. In those proceedings according to Mr.Samdani, the police authorities were directed to hand over possession of the flat to the Defendants. He further stated that the same was done and that Defendant No.1 is now in possession of the flat as the owner thereof.

5. By this amendment prayer (a) of the plaint is sought to be substituted with the following prayer :-

> "(a) that it be ordered by this Hon'ble Court that Plaintiff be put back in possession who has been forcibly dispossessed by the Police of Dadar Police Station Mr.Pradip Nisar who colluded with defendants on 2.9.2003 from Flat No.601, 'B' Wing, 6th floor, Silverdunes Apartment, Eknathbuo Hatkar Marg, Opp.Beach Tower, Prabhadevi, Mumbai 400 025."

6. This is an entirely different cause of action. It is true that the mere claim of ownership

of a property would not bar the maintainability of a suit under Section 6 of the Specific Relief Act. However, in the present case the amended prayer clearly states that it is the police authorities who dispossessed the Plaintiffs "in collusion with" the Defendants on 2nd September, 2003. Even the name of the police officer is mentioned in the prayer.

7. It is pertinent to note that neither the police authorities nor the particular police officer have been made a party to this suit. The grant of the amendment would therefore in any event be futile.

8. Defendant No.1 has taken possession of the suit premises in accordance with law and pursuant to the aforesaid proceedings under the IPC/Cr.PC. There can be nothing illegal regarding the same. It is always open to the Plaintiffs to pursue this proceeding in exercise of their rights, if any, if possession of the premises has actually been taken wrongly.

9. In this view of the matter, it is not necessary to consider Mr.Samdani’s contention that the Chamber Summons is also liable to be dismissed on the ground that the claim under Section 6 of the Specific

Relief Act is barred by limitation on the date of Chamber Summons.

10. In the circumstances, the Chamber Summons is dismissed.